

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

JONATHAN LANGLEY	§	Civil Action No.: 1-18-cv-443
	§	
Plaintiff,	§	
	§	
vs.	§	JURY TRIAL DEMANDED
	§	
INTERNATIONAL BUSINESS	§	
MACHINES CORPORATION,	§	
	§	
Defendant.	§	

COMPLAINT

1. This action arises under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 *et seq.* (“ADEA”), and Chapter 21 of the Texas Labor Code.

Parties

2. Plaintiff Jonathan Langley is 60 years old and resides in the Western District of Texas.

3. Defendant International Business Machines Corporation (“IBM”) is a corporation with its principal offices at 1 New Orchard Road, Armonk, New York 10504-1722. IBM does business in the Western District of Texas and maintains local offices at 11501 Burnet Road, Austin, Texas, 78758.

Subject Matter Jurisdiction, Venue and Exhaustion

4. This Court has jurisdiction over the subject matter of Mr. Langley’s ADEA claim pursuant to 29 U.S.C. §626(b)-(c) and 28 U.S.C. §1337. Supplemental jurisdiction over Mr. Langley’s state law claim exists under 28 U.S.C. § 1367.

5. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. §1391(b) and (c).

6. Mr. Langley timely filed a Charge of Discrimination with the EEOC alleging age discrimination on October 20, 2017 which was cross-filed with the Texas Workforce Commission civil rights division. Such filing occurred within 180 days of the unlawful employment practices alleged in this Complaint. More than 60 days have passed since the filing of Mr. Langley's Charge.

Facts Giving Rise To This Action

7. The story in *Langley v. IBM* begins four years ago when IBM undertook to reinvent itself in the age of the Millennial.



8. Shortly after Ginni Rometty became Chief Executive Officer of IBM in 2012, IBM embarked on a massive reinvention and rebranding campaign that had two principal and symbiotic objectives: first, to transform IBM into a “Cognitive Solutions” company deeply invested in the Cloud, Analytics, Mobile, Security and Social technology markets (“CAMS”),¹ and second, to change the face of IBM by recruiting and retaining “digitally native” Millennials, which IBM defined as the generation born after 1980.

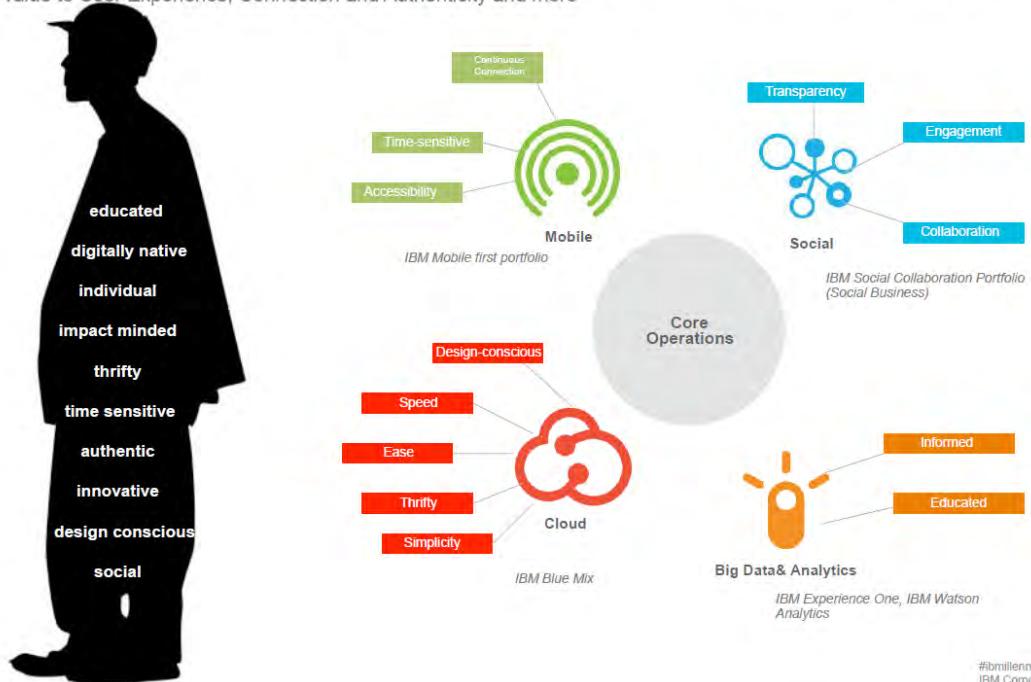
¹ See, e.g., Transcript of speech of Ginni Rometty delivered April 26, 2016, available at https://www.ibm.com/ibm/ginni/04_26_2016.html, accessed April 2, 2017 (“[I]n 2014 [IBM]

9. At a 2014 conference titled “*Reinvention In The Age of The Millennial*,”² IBM expressly linked its success in CAMS to Millennials, asserting that “CAMS are driven by Millennial Traits.” By “reinventing” itself, IBM sought to “leapfrog[] the existing perception of IBM to become a leader in Millennial engagement” and thereby “drive CAMS adoption.” IBM intended to become “exponentially relevant with the Millennial demographic” by “showcas[ing] IBM’s capabilities in CAMS, driven by the digitally native millennials.”

IBM

CAMS are driven by Millennial Traits

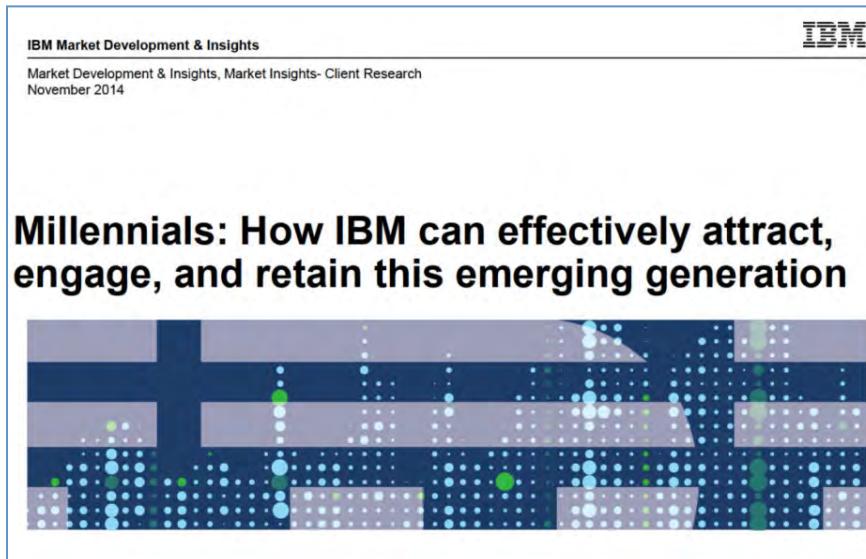
The market acceleration towards CAMS is driven by the demands of the digital natives- millennials- who attribute value to User Experience, Connection and Authenticity and more



² See, *Reinvention in the Age of the Millennial*, IBM Center for Applied Insights Blog published December 16, 2014, accessed March 27, 2017 at <https://ibmca1.com/2014/12/16/reinvention-in-the-age-of-the-millennial/>.

10. Millennials represented a “trillion dollar market” and “billions” of dollars in potential sales for IBM. To capture the Millennial market, IBM had to “become one with the Millennial mindset.” “Mindshare converts to marketshare,” IBM wrote, and IBM’s “leadership in millennial engagement is the ideal value proposition for generating CAMS pipeline, which is driven by Millennial traits.” “[T]he secret to capturing the hearts, minds, and most importantly, wallets of the millennial generation is likely working with you. Your millennial employees are your most valuable and accessible asset when it comes to successfully marketing your business to the millennial generation.”³

11. Also in 2014, IBM published “*Millennials: How IBM can effectively attract, engage and retain this emerging generation.*” Because Millennials meant big money for IBM and because IBM “face[d] major competition with [other] companies acquiring Millennials, both within the tech sector (i.e., Microsoft, Amazon) and beyond,” IBM developed a “strategy to attract top Millennial talent.”



³ “Marketing and the Millennial Mindset” – An Interview with IBM’s Samantha Klein, The Marketing Journal, June 3, 2016, available at <http://www.marketingjournal.org/marketing-and-the-millennial-mindset-an-interview-with-ibms-samantha-klein/>

Millennials 

Attract.Engage.Retain.

The generation born after 1980...

Mobile	Connected	Social
 75% own smartphones	 83% sleep with their smartphones	 51% use social networking at the office

27% of the U.S. population
75% of the workforce by 2025
30% are decision makers

Nearly 60% leave companies within 3 years because "it's not a good cultural fit"

74% want flexible work schedules 71% want feedback and fast 70% say giving back is their top priority

2014 Preferred Companies to Work for:

1. St. Jude Children's Hospital	8. Health Care Service Corp.
2. Google	9. Children's Healthcare of Atlanta
3. Walt Disney Company	10. CIA
4. Apple	11. Microsoft
5. Local Hospital	22. Amazon
6. FBI	42. IBM
7. DreamWorks Animation	

To gain a competitive edge in recruiting and retention, IBM must:

1. Attract  via
Competitive salary
Work-life balance
Meaningful work

2. Engage  via
Technology
Social responsibility
Collaboration

3. Retain  via
Career progression
Workplace culture
Feedback & recognition

To stand out, IBM must focus on increasing brand relevancy by:

1. Leveraging the "halo" effect from other Brands and partnerships 
2. Improving awareness among students through clearly branding IBM software 
3. Spreading the word about Watson's innovative capabilities and other hot topics 

Although Millennials' perception of IBM is favorable – IBM does not stand out.

To differentiate itself, IBM must reach Millennial decision makers through the right channels...

	Websites	Video	Audio	Print	Social Media
Millennials	41%	31%	28%	27%	27%
Non-Millennials	22%	15%	18%	11%	13%

And provide relevant and engaging content through the sources they rely on at all stages of the buying journey

Learn → Solve → Compare → Purchase

- Vendor Website
- Vendor Sales Rep  Vendor Sales Reps (reached through multiple channels) are particularly important in the Solve and Purchase stages
- Industry Analysts

12. IBM aggressively executed its strategy to attract top Millennial talent on social media. On Twitter, for example, IBM created a Twitter page dedicated solely to Millennials – #IBMillennial – where IBM praised Millennials regularly and regularly features them on the IBM Twitter Jobs account.

IBM Social Business @IBMSocialBiz · 28 May 2015

NEXT WEEK: Uncover the potential of the [#millennial](#) minded buyer at [#IBMDX15](#)

[ibm.co/1IN0uA6](#)
#IBMillennial



“Millennials are making a significant impact in the workplace. They’re not afraid of traditional barriers.”

—@rducré

#IBMDX15 #IBMillennial

4 23 1

IBM Social Business @IBMSocialBiz · 29 May 2015

MONDAY: Uncover the potential of the millennial minded buyer at [#IBMDX15](#).

[ibm.co/1IN0uA6](#) #IBMillennial



“Millennials are reshaping the way we work, and companies must recognize this and transform to remain relevant.”

—@rducré

#IBMDX15 #IBMillennial

4 23 1

Hugo Nobre @erbon · 13 May 2015
RT IBMSocialBiz "Look into millennial feedback, says Indsuen during the #IBMillennial panel at #IBMAmplify. #NewWa..."



"If a millennial took the time to share negative feedback, **take the time** to look into it."

—@lndsuen

IBM Amplify 2015 #IBMillennial

1 1

Cheya Cunanan @cheyatweets · 30 Jun 2016
"We are the future, so we're building the company we want to lead"
@sarahwarsaw #IBMillennial #millennial #FF2020



12 reasons why working for a global company is really amazing
By Sarah Warsaw On the plane home from New York recently, I looked back at all the notes and comments I'd written down from the week. My favouri...
blog.ibm.jobs

1 1 4



13. IBM also instituted an “Early Professional” hiring program targeted solely at young professionals. “The idea is to bring in as much young talent into the workforce with every given opportunity.”⁴ IBM tells Millennials that they make great sellers because they are – well, Millennials – and therefore they should come sell for IBM.

⁴ *IBM New Team to Focus on Millennials*, Business Standard, May 31, 2016, accessed March 20, 2017 at http://www.business-standard.com/article/companies/ibm-s-new-team-to-focus-on-millennials-116053000677_1.html



14. Another part of IBM's Millennial-driven reinvention was expressed in the creation of IBM's "Millennial Corps." IBM's "Millennial Corps is a group of more than 5,000 IBMers [from] all across the world where Millennial-age and Millennial-minded IBMers come together to share ideas, feedback and suggestions, [and] really try[] to drive change within [IBM] as ultimately [they] are the future leaders of it."⁵

15. Recently, IBM launched **you^{IBM}**, an international branding campaign vividly portraying IBM as a youth-oriented tech company.⁶

⁵ *Inside IBM: Meet Sarah, a Millennial Corps member who works in Workforce Enablement*, available at <https://www.youtube.com/watch?v=jUmULbTzKpE>.

⁶ See, <https://www.ibm.com/thought-leadership/you/manifesto/> accessed July 27, 2017.

MAKING WORK WORK.

When you couple exponential knowledge with the exponential power of technology, you can realize exponential outcomes. This is how you can do your best work ever. This is you to the power of IBM.

ibm.com/you

you^{IBM}



Allison Allain,
IBM Developer.

THE POWER OF YOU.

Data is the new basis of competitive advantage—for industries, for companies and for you. But no human can read, see, feel, hear and make sense of all the data that is transforming their work and their profession. IBM Cloud, with Watson, can. It's a wholly new platform for business, backed by IBMers and technologies that enable you to do your life's work. This is you to the power of IBM.

I CAN TURN WEATHER AND TWEETS INTO HIGH-YIELD RETURNS.

With IBM Cloud and IBM Systems, bankers can combine transactions with structured and unstructured data to detect previously invisible patterns and create new financial products. All in a secure, compliant environment. This is banking to the power of IBM.

you^{IBM}

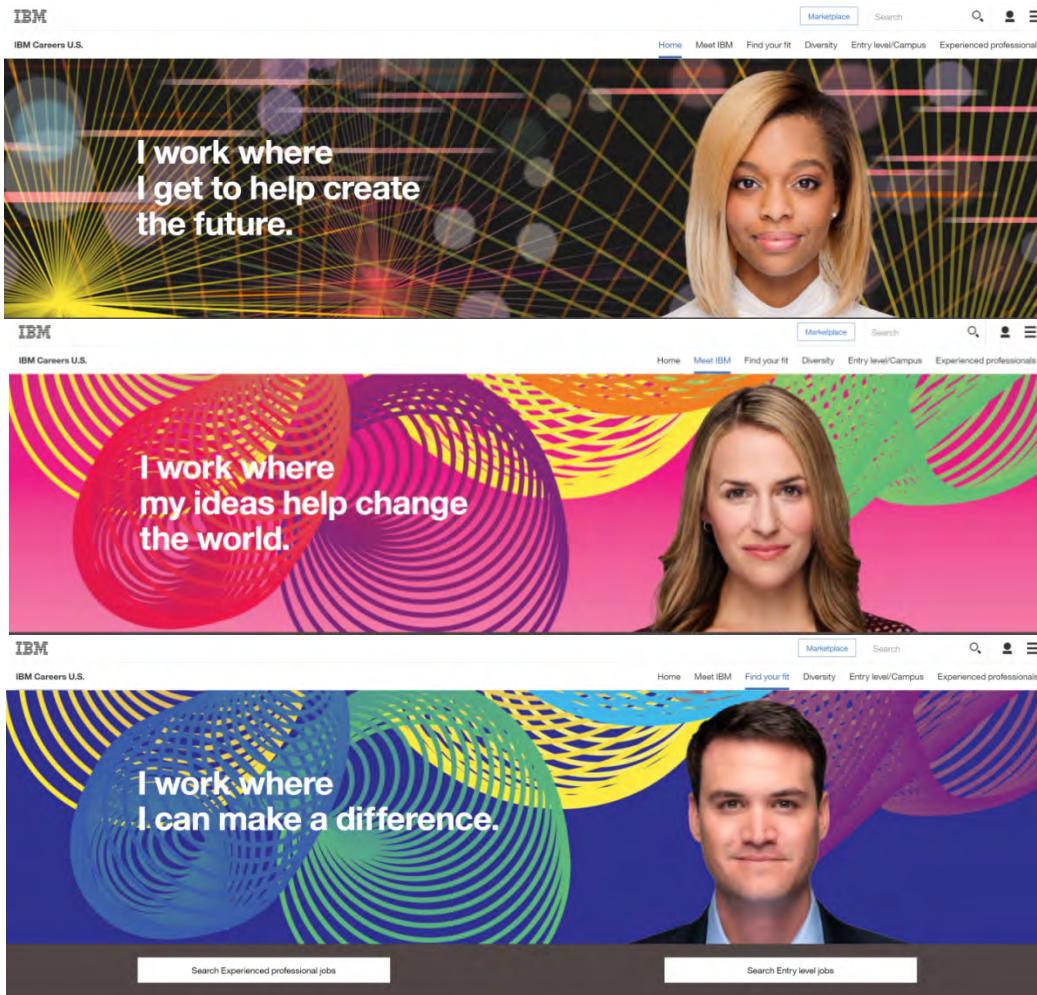


16. On YouTube, IBM calls itself a “new IBM” by which it means a youth-oriented IBM.⁷



⁷ *IBM Today*, video published May 10, 2017, available at https://www.youtube.com/watch?v=P3yjLmY_bz4, accessed August 9, 2017. See also, <https://goo.gl/7ern7E>, accessed April 2, 2017 (featuring video testimonials of dozens of Millennial IBMers).

17. IBM writes that “[a]n organization’s internal brand tells its story, and, in turn, reveals its true culture.... An organization’s career site ... should portray the company’s internal brand.”⁸ This is how IBM “reveals its true culture” on its own Career site:⁹



⁸ Does your internal branding speak to your candidates? © Copyright IBM Corporation 2014, available at <https://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=LOS14030USEN>, accessed August 8, 2017.

⁹ See, <http://www-03.ibm.com/employment/us/>, http://www-03.ibm.com/employment/us/meet_ibm.shtml, and http://www-03.ibm.com/employment/us/find_your_fit.shtml, accessed March 19, 2017.

18. IBM's LinkedIn page sends a similar age-based signal:¹⁰

The screenshot shows the LinkedIn company page for IBM. The top navigation bar includes 'Search', 'Home', 'My Network', 'Jobs', 'Messaging', 'Notifications', 'Me', 'Work', and 'Try Premium for Free'. A large banner at the top reads 'We're reinventing education'. Below it are three promotional sections:

- I work where I can help build the future.** (Man in grey jacket)
Find your place in IBM's Cognitive Era
Great things are happening here. IBM's unparalleled technology leadership is the result of its brilliant talent: a group of IBMers who have a laser-like focus on innovation and unrelenting drive to solve some of the world's most complex problems. Find out more about our tech culture and the inspiring, interesting, and innovative projects IBMers are involved in.
[Find more](#)
- I work where I get to learn, invent and create every day.** (Woman in dark top)
Outthink your limits. Do work that matters. Explore life at IBM.
Meet some of the inspiring IBM women who are making a difference right now.
[Find out more #WomenAtIBM](#)
- I work where I help create the big picture.** (Woman in red top)
Immerse yourself in the world of IBM.
Read about how IBMers discover their potential, how we work with diverse teams, and how we are inspired to create breakthroughs. Follow the IBM Jobs Blog to gain career insights from IBMers, learn about company news and the latest technology trends, and to find out why IBM is considered one of the best places to work. Follow the IBM Jobs Blog.
[Find out more at IBM Jobs Blog](#)

¹⁰

See, <https://www.linkedin.com/company-beta/1009/life/> accessed March 26, 2017.

19. And when CNBC's Jim Cramer interviewed IBM's CEO in June, 2017, IBM ensured she was surrounded by Millennials busily working in the background.¹¹



20. IBM has devoted countless millions of dollars to its effort to rebrand as a hip, Millennial-centric tech company. The activities and publications described above are illustrative, not exhaustive. IBM complemented them with Millennial-themed seminars, holiday parties, blogs,¹² leadership programs, social media initiatives, white papers,¹³ online videos,

¹¹ Ginny Rometty June 20, 2017 interview with CNBC's Jim Cramer, accessed August 2, 2017 and available at <https://www.youtube.com/watch?v=fgc4aj-JMJg>.

¹² E.g., *Step-by-Step: Lead like a Millennial executive*, December 11, 2015, available at <https://www.ibm.com/blogs/think-leaders/how-to/step-by-step-lead-like-a-millennial-executive/>; *The Key to Recruiting Millennials*, March 17, 2016, available at <https://www.ibm.com/blogs/smarter-workforce/2016/03/the-key-to-recruiting-millennials/>

¹³ E.g., *Can the Millennial generation rescue government? Leveraging digital natives in your transformation efforts*, IBM Institute for Business Value, 2016, available online at <https://www-935.ibm.com/services/us/gbs/thoughtleadership/govtmillennials/>

newscasts¹⁴ and other advertising and public relations efforts intended to shed IBM's image "as a company composed mainly of aging white guys," and to substitute in its place a new, cooler, much younger image of IBM comprised of "rock star" Millennials.¹⁵



¹⁴ E.g., *The truth behind millennials in the workplace*, Fox Business News segment airing February 15, 2015, available at <http://video.foxbusiness.com/v/4069023679001/?#sp=show-clips>

¹⁵ 17 IBM rock star employees that show the company's new direction, The Business Insider, April 9, 2015, accessed March 27, 2017, available at <http://www.businessinsider.com/ibm-rock-star-employees-2015-4>.

Why “digitally native” Millennials?

21. Simple. IBM believes Millennials are the most educated, technologically adept and digitally proficient generation of workers alive, making them superior to older employees in the new CAMS markets. Millennials are highly innovative and instinctively collaborative, whereas Boomers are not. IBM also believes that Millennials “speak Millennial,” giving them a fluency in communicating with other Millennials and a special rapport with Millennials who work for companies that purchase IBM’s products and services.

Millennials are awesome! Boomers, not so much

22. In 2015, IBM published “*Myths, exaggerations and uncomfortable truths – The real story behind Millennials in the workplace*,”¹⁶ a recruiting tool that flattered Millennials and purported to refute stereotypes about Millennials.



Myths, exaggerations and uncomfortable truths
The real story behind Millennials in the workplace

IBM Institute for Business Value

¹⁶ Available at <https://www-935.ibm.com/services/us/gbs/thoughtleadership/millennialworkplace/> accessed March 27, 2017.

23. *Myths, exaggerations and uncomfortable truths* expressly compared and contrasted Millennial employees with Generation X and with Baby Boomers. Whereas IBM professed to find many positive traits associated with the Millennial generation, IBM tended to be critical of older workers.

24. For example, older workers were technologically less sophisticated because they were not “digital natives.” Baby Boomers allegedly “place[d] less stock in the advantages [that] data offer[ed] than their younger colleagues” and were comparatively “dubious” of technology. Boomers were also far less “savvy” than Millennials with respect to social media.

25. “Successor generations X and Y are generally much more innovative and receptive to technology than baby boomers,” IBM wrote in another publication.¹⁷ “[A]ge is catching up with Baby Boomers,” whom IBM referred to as “gray hairs” and “old heads.”¹⁸ Boomers were leaving work in increasing numbers “due to retirement or disability.” Those still working often needed accommodations for “‘wear and tear’ disabilities like hearing and vision impairment *[sic]* that older people routinely develop.”¹⁹

26. Boomer employees were also less likely to admit mistakes at work or collaborate in decision-making, traits that caused friction in the workplace. “Baby Boomers accustomed to making decisions on their own may find it difficult to shift to a more collaborative culture, which can cause tension between older and younger employees.” In a 2015 paper entitled “*To buy or*

¹⁷ *The Maturing Workforce, Innovation in Workforce Enablement*, IBM Business Consulting Services, 2006, p. 6 accessed March 29, 2017, available at <https://www-935.ibm.com/services/uk/bcs/pdf/maturing-workforce-feus01291-1.pdf>.

¹⁸ *Id.* at pp. 2-3.

¹⁹ *Id.* at p. 3.

*not to buy? How Millennials are reshaping B2B marketing,*²⁰ IBM again found that Boomer employees were not motivated to consult their colleagues before making decisions. This was a negative trait because “[f]or leading organizations, a corporate culture of collaboration and consensus building is needed.” To create that culture, IBM recommended that companies “[p]ut Millennials on [their] sales and marketing teams.”

27. In August, 2016, IBM Marketing Manager Erika Riehle stereotyped Boomer employees as contributing to five workplace “dysfunctions.”²¹ Boomers were allegedly less trusting of their co-workers, less collaborative, less committed, less accountable and less attentive to results. Compared to younger employees, IBM found that Boomers were the least likely to understand IBM’s business strategy, least likely to understand their manager’s expectations of them, least likely to understand what customers wanted, and the least likely to understand IBM’s brand.

28. IBM’s findings about Boomers boded ill for IBM’s Boomer employees because IBM’s “foundational competencies” consisted of traits such as teamwork and collaboration that Boomers lacked.

IBM de-ages its workforce

29. IBM conspicuously projects a diverse and inclusive employment brand with respect to race, national origin, gender, disability and sexual orientation. As conspicuously, however, IBM does not brand itself as being interested in older workers. With respect to age, IBM’s branding message is clear. Young people are welcome, perfectly fit IBM’s new culture

²⁰ Accessed March 27, 2017 and available at <http://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=GBE03658USEN>.

²¹ *Managing Millennials: 5 Common Issues Leaders Face*, published August 24, 2016, accessed March 27, 2017 at <https://www.ibm.com/blogs/social-business/2016/08/24/managing-millennials-5-common-issues-leaders-face/>.

and are encouraged to apply for employment. At the same time, IBM signals to decisionmakers that Baby Boomers are not welcome at IBM and do not fit IBM's new culture. IBM broadcast these signals loudly, repeatedly and system-wide. And in the years between 2013 and 2017, IBM's Boomer employees – being labeled by IBM's own research as uncollaborative, skeptical of leadership, technologically unsophisticated, less innovative and generally out of touch with IBM's brand, customers and objectives – were shown the door in droves.

30. In 2015 alone, IBM laid-off several tens of thousands of employees, the vast majority of whom were over the age of 40, and the greatest concentration of which were Baby Boomers.

31. When IBM conducts a “Resource Action” (IBM speak for a reduction in force), it *shields* its youngest employees from lay-off. IBM's Early Professionals are *exempt* from reduction for nine months from their hire date. Only IBM's youngest workers receive this special treatment.

32. Not only does IBM shield its youngest workers from lay-off, at the same time as IBM has laid off thousands of Baby Boomers, it has aggressively recruited and hired many thousands of Millennials and members of Generations X and Z.

33. IBM's aggressive hiring of younger workers is part of its deliberate strategy to “Transform[] to Next Generation Digital Talent.” For example, in IBM's Software Group (“SWG”), which is split between Manufacturing and Development (“M&D”) and Sales and Distribution (“S&D”), IBM sought to increase the percentage of Early Professionals hired into M&D from 77% in 2012 to 90% in 2015, and the overall percentage of Early Professionals hired into its SWG from 56% to 65% over the same period.

34. IBM did this by executing over a thousand early allocation university chits, “build[ing] and leverag[ing] additional early professional talent pools,” substantially increasing its conversion rate of interns to full hires, and by “sell[ing] early professionals on IBM.”

35. IBM also moved to “[s]hift [its] headcount mix towards [a] greater % of Early Professional hires” and to “re-profile [its] current talent” by implementing a “[c]ontinuous talent refresh” that “focus[es] on programs to create room for new talent to build skills for key growth areas in Cloud and Cognitive.”

36. IBM’s express purpose is to achieve “55% Early Professional Hires in 2020.” It aggressively seeks an “influx of EP’s *[sic]* to correct [its] seniority mix,” has developed specific strategies for recruiting and hiring Early Professionals, and has created positions for younger workers by “[u]tilizing various reduction initiatives such as resource action[s],” whereby older workers are laid-off.

37. In Mr. Langley’s Hybrid Cloud business unit, IBM began to “drive a more aggressive performance management approach to enable [it] to hire and replace, and fund an influx of EP’s to correct [its] seniority mix (46% benchmark vs 21% actual).” IBM sought to eventually increase the percentage of Early Professionals in its Hybrid Cloud business unit to 59%.

38. The deliberately age-based impact of IBM’s lay-offs was so stark and so statistically significant that in 2014, IBM stopped requesting ADEA releases from its terminated older workers.²² IBM did this to circumvent the Older Workers Benefits Protection Act

²² See, *IBM Halts Practice of Disclosing Ages of Fired Older Workers*, AARP Work Matters, May 12, 2014, available at <http://blog.aarp.org/2014/05/12/ibm-halts-practice-of-disclosing-fired-older-workers/>.

(“OWBPA”).²³ Although IBM stopped requesting releases of ADEA claims, it nonetheless required any older worker who accepted IBM’s one month severance offer to privately arbitrate their ADEA claims, subject to limited discovery and a full waiver of the right to pursue or participate in a collective action under the ADEA.

39. IBM’s excision of so many thousands of older workers – people who had provided 20, 25 and sometimes 30 or more years of service to IBM – hardly went unnoticed. After thousands of former IBMers set up online support groups such as “Watching IBM” and started talking about their lay-off experiences, some of America’s most accomplished investigative journalists began asking questions.

40. Following a lengthy investigation by ProPublica and Mother Jones, journalists Peter Gosselin and Ariana Tobin published an extensive report in March, 2018 meticulously detailing how IBM targeted its older employees with layoffs and forced retirements to make room for substantially younger recruits.²⁴ On May 17, 2018, Mr. Gosselin wrote a companion

²³ Under OWBPA, an employer requesting an ADEA waiver in connection with a group termination program must provide terminated employees with a list of “the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.” 29 U.S.C. § 626(f)(1)(H)(ii). Congress mandated the disclosure of this comparative information because it believed that “[t]he principal difficulty encountered by older workers in [a RIF] is their inability to determine whether the program gives rise to a valid claim under the ADEA... The informational requirements set forth in the bill are designed to give all eligible employees a better picture of these factors.” S. Rep. No. 101-263, at 67 (1990), reprinted in 1990 U.S.C.C.A.N. 1509.

²⁴ See, *CUTTING ‘OLD HEADS’ AT IBM*, March 22, 2018, available at <https://features.propublica.org/ibm/ibm-age-discrimination-american-workers/>.

article, which reports on the U.S. Equal Employment Opportunity Commission's large-scale investigation of IBM's discriminatory practices.²⁵

41. IBM's primary method for taking out its older workers is surprisingly simple. A directive comes down to first and second line managers to reduce headcount. Using IBM's "staff reduction methodology," first and second line managers generate secret ratings of employees eligible for reduction using predominantly subjective evaluation criteria. The employees are then ranked against one another and the lowest ranked employees are then selected for reduction.

42. Age discrimination taints the resource action from the outset because IBM's objective is to make room for younger employees. But for IBM's move to reinvent itself in the age of the Millennial and its campaign to attract, engage and retain Millennial talent, downsized older workers would not have been let go.

43. At least one statistical analysis performed on an IBM data set found that age played a statistically significant role in managers' stack rankings after accounting for the effects of performance relative to goal, manager-specific idiosyncratic tendencies and job band. In other words, as age increased, individuals' stack rankings fell. The analysis further concluded that age was the only conventionally significant predictor of termination decisions. The IBM data supported the conclusion that employees' age had a significant effect on managerial rankings, and that these rankings, in turn, were the primary input into selection decisions. This mediational pattern showed that age had a significant indirect effect on termination decisions, controlling for other available information. In other words, controlling for non-age factors, as an

²⁵ See, *FEDERAL WATCHDOG LAUNCHES INVESTIGATION OF AGE BIAS AT IBM*, May 17, 2018, available at <https://www.propublica.org/article/federal-watchdog-launches-investigation-of-age-bias-at-ibm>.

IBMer aged, she or he became worse off. Holding non-age factors constant, managers lowered stack rankings and were increasingly likely to select employees for reduction as they grew older.

44. IBM managers sometimes pre-select employees for reduction before performing the staff reduction methodology. That is to say, IBM managers sometimes reverse engineer their staff reduction worksheets by first selecting the employees they wish to terminate, and then creating ratings and rankings that purport to justify their selection decisions.

45. Beyond this, line managers often fail to rate people on their teams and instead rate people who report to other line managers, both violations of IBM's written staff reduction guidelines.

Mr. Langley's Performance at IBM

46. Mr. Langley, age 60, joined IBM in 1993 and worked continuously for IBM for the next 24 years.

47. In 2016 and into 2017, Mr. Langley worked as Worldwide Program Director/Sales Lead Bluemix SaaS in IBM's Hybrid Cloud business unit. He reported to Kim Overbay, age 43, Director of Global Sales, IBM Application Platform and Runtimes, who in turn reported to Andrew Brown, age 46, Vice President of Worldwide Sales, IBM Hybrid Cloud Software.

48. Mr. Langley was a successful employee and his performance met or exceeded IBM's expectations.

49. In addition to a substantial salary, Mr. Langley earned substantial bonus pay and fringe benefits with IBM, including a health benefits portfolio consisting of medical insurance, dental insurance, vision insurance, disability insurance, a Health Saving Account and a Flexible

Spending Account. Mr. Langley also had a 401K+ Plan, a vacation plan providing for 20 days of paid vacation, a paid holiday plan, an Employee Stock Purchase Plan and life insurance.

50. In January 2017, IBM awarded Mr. Langley a \$20,000 performance bonus for Q4 2016 that his supervisor Kim Overbay said was the largest bonus on her team.

51. Mr. Langley's bonus for 2016 was 55% above his 2015 bonus.

Mr. Langley's Termination from IBM

52. In December, 2016, Mr. Brown sent Mr. Langley a private email telling him that he needed to look for a new job.

53. On or about March 30, 2017, Kim Overbay told Mr. Langley that he was being permanently laid off effective June 28, 2017 as part of a resource action.

54. Mr. Langley applied for four other positions with IBM in an effort to continue his employment. He was not hired for any of them.

55. Although IBM had involuntarily terminated Mr. Langley, IBM subsequently marked Mr. Langley as having "resigned" in its HRIS system. Then, on or about July 6, 2017, Mr. Langley received a letter from IBM congratulating him on his "retirement."

IBM Lies to the EEOC

56. IBM told the EEOC that Overbay, using a staff reduction methodology in January, 2017, selected Langley for reduction because he scored lowest on Overbay's secret stack ranking when she ranked him against three other members of his team. It also claimed that Langley was the youngest of the four people Overbay evaluated.

57. In fact, however, Overbay's January, 2017 staff reduction methodology was not how IBM selected Mr. Langley for reduction. Brown had told Langley in December, 2016 that

Langley needed to look for other employment. IBM had selected Langley for reduction before Overbay's alleged evaluation and selection decision in January.

58. IBM also lied about the number of people on Overbay's team; there were at least eight people who reported to Overbay, not four.

59. IBM similarly lied about Langley's job performance, claiming that Langley was not collaborative, communicative, responsive to the sales team and so on.

60. Overbay's criticisms are contradicted by dozens of emails praising Langley for the very skills that Overbay claimed Langley lacked.

61. Overbay's criticisms are contradicted by Langley's consistent receipt of 1, 2+ or 2 performance ratings on his Personal Business Commitment ("PBC") annual performance reviews, which ratings were all relative to other members of his team, and which ratings reflected that Langley performed his job at least as well and often above the level of other members of his team.

62. Overbay's criticisms are also contradicted by the Langley's receipt of the largest performance bonus of any member of his team in January, 2017.

63. Contrary to the pretextual reasons articulated in IBM's EEOC Position Statement, the actual reason for selecting Mr. Langley for termination was his age.

64. IBM treated substantially younger persons more favorably by (a) signaling through its internal and external branding and marketing that IBM wished to hire and/or retain younger persons, (b) applying subjective RIF criteria designed to screen out older workers, disregarding the official PBC ratings and evaluations of older workers who were strong performers and assigning them lower ratings for the purpose of selecting them for reduction,

(c) not selecting younger persons for reduction, (d) providing younger workers training opportunities that were not provided to older workers, and by (e) transferring younger employees selected for reduction to other positions in IBM.

65. Had Mr. Langley been younger, and especially if he had been a Millennial, IBM would not have fired him.

66. Mr. Langley's age was a motivating factor in his selection for termination.

Count I – ADEA - Disparate Treatment Involving Termination

67. Mr. Langley incorporates by reference the allegations above as though set forth in full.

68. IBM terminated Mr. Langley because of his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1).

69. IBM's violation of the ADEA was willful.

70. As the direct result of IBM's age discrimination, Mr. Langley has sustained and will continue to sustain wage and benefits losses, and has incurred and will continue to incur out of pocket losses, including attorney fees and legal costs.

71. As the direct result of Defendant's pretextual criticisms of Mr. Langley's performance, Mr. Langley has lost earnings capacity.

WHEREFORE, Mr. Langley demands judgment as follows:

- a. That IBM be ordered to pay Mr. Langley back pay and benefits with interest;
- b. That IBM be ordered to reinstate Mr. Langley to his former position with all lost pay and benefits, seniority and promotions;
- c. That in the alternative, IBM be required to pay Mr. Langley front pay and benefits in the event reinstatement is not feasible;

- d. That a final judgment in favor of Mr. Langley and against IBM be entered for liquidated damages in an amount equal to the amount of wages due and owing to Mr. Langley;
- e. That Mr. Langley be awarded damages for loss of earnings capacity;
- f. That IBM be enjoined from discriminating against Mr. Langley in any manner that violates the ADEA;
- g. That Mr. Langley be awarded the costs and expenses of this litigation and his reasonable attorney fees;
- h. That Mr. Langley be awarded compensation for the adverse tax consequences of his recovery of wages and benefits in a lump sum, and,
- i. That Mr. Langley be granted such further legal and equitable relief as the Court may deem just and proper.

Count II – Chapter 21 Texas Labor Code – Disparate Treatment Involving Termination

- 72. Mr. Langley incorporates all paragraphs above as though set forth in full.
- 73. IBM's practices as set forth in Count I violate Chapter 21 of the Texas Labor Code prohibiting discrimination on the basis of age.
- 74. IBM acted with reckless indifference to Mr. Langley's right under Texas law to be free from age discrimination.

75. As the direct result of the aforesaid employment practices, Mr. Langley sustained the damages and injuries set forth above, as well as grief, anxiety, worry and distress.

WHEREFORE, Mr. Langley demands judgment as follows:

- a. That IBM be ordered to pay Mr. Langley back pay and benefits with interest;
- b. That IBM be ordered to reinstate Mr. Langley to his former position with all lost pay and benefits, seniority and promotions;
- c. That in the alternative, IBM be required to pay Mr. Langley front pay and benefits in the event reinstatement is not feasible;

- d. That a final judgment in favor of Mr. Langley and against IBM be entered for liquidated damages in an amount equal to the amount of wages due and owing to Mr. Langley;
- e. That Mr. Langley be awarded damages for loss of earnings capacity;
- f. That IBM be enjoined from discriminating against Mr. Langley in any manner that violates the ADEA;
- g. That Mr. Langley be awarded the costs and expenses of this litigation and his reasonable attorney fees;
- h. That Mr. Langley be awarded compensatory and punitive damages;
- i. That Mr. Langley be awarded compensation for the adverse tax consequences of his recovery of wages and benefits in a lump sum, and,
- j. That Mr. Langley be granted such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted,

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